



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS
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Agenda item 6: Limitations and exceptions for libraries and archives

Topic 8: Limitations on liability of libraries and archives

499 words

Thank you, Mr Chair, for inviting EBLIDA, the European Bureau of Library, Information and Documentation Associations, to take the floor.

Librarians, archivists and museum professionals around the world are governed by professional codes of ethics which include respect for copyright law. IFLA's own Code of Ethics states that "*Librarians and other information workers recognise the intellectual property right of authors and other creators and will seek to ensure that their rights are respected.*"¹ Libraries, archives and museums are major institutions that want to comply with the law and need to preserve their good names and reputations, yet when it comes to interpreting copyright law, they and their staff are having to put themselves on the line in the public interest, but without sufficient legal protection.

In the European Union, the complex layering of EU Directives and Regulations, national laws and court rulings leads to a sprawling jungle of interpretations within Member States, only some of which reach resolution in the EU Court of Justice. This causes substantive legal uncertainty for libraries, archives, museums and their staff - who are *not* trained lawyers. The majority of these institutions cannot afford to retain lawyers to help them sort out the complex requirements of copyright laws in situations ranging from individual requests to displaying works from their collections or the mass digitisation of millions of works.

Furthermore, knowledge and information are increasingly accessed through licences that are often operated under a foreign jurisdiction, such as a particular US State's contract law, adding further complexity to the legal framework that applies to the work of librarians in particular.

Two examples from the EU itself, testify to the need to limit liability for librarians, archivists and museum professionals:

¹ <http://www.ifla.org/faife/professional-codes-of-ethics-for-librarians>

- The Information Society Directive of 2001 lists 20 optional exceptions that the 31 European Economic Area Member States can 'pick and mix' at will and implement in 31 different variations at national level. It is impossible for librarians, archivists and museum professionals, asked to provide copies of information across borders in answer to researchers' requests and enquiries, to ascertain what is allowed in the different countries concerned. Such uncertainty can cause institutions to unnecessarily refuse such requests for fear of exposure to potential claims of copyright infringement.²
- The EU Orphan Works Directive of 2012 imposes burdensome 'Diligent Search' requirements for clearing rights in potentially orphaned works across the EU so that they may be registered and declared officially orphaned. However, despite this, the legislation doesn't provide full indemnity for European libraries, archives and museums in the event of a rightholder or their grandchildren appearing out of nowhere claiming copyright infringement.³

It is only fair that exceptions for libraries, archives and museums are underpinned by a limitation on liability with regard to the good faith non-commercial activities of librarians, archivists and museum professionals so that they can carry out their public interest missions safe in the knowledge they are protected from liability for inadvertent or unintended copyright infringement.

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² [Information Society Directive 2001/29/EC](#)

³ [Orphan Works Directive 2012/28/EU](#)